

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* REBECCA L. POOLE, LAURENCE E. ENGLAND  
and HOWARD J. GLASER

Application No. 09/939,813

MAILED

MAY 03 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on April 4, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith returned to the examiner. The matters requiring attention prior to docketing are identified below:

On August 1, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, a review of the document reveals that the following sections are missing from the Appeal Brief filed August 1, 2005:

- (1) "**Evidence appendix**," as set forth in 37 CFR § 41.37(c)(1)(ix); and

(2) "**Related proceedings appendix**," as set forth in 37 CFR § 41.37(c)(1)(x).

The Appeal Brief does not comply with the new rules under 37 CFR § 41.37(c). It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Further review has revealed that the Examiner's Answer mailed October 13, 2005 is non-compliant with the new rules set forth in 37 CFR § 41.37 effective September 13, 2004 because section "**(8) Evidence Relied Upon**," fails to list the relevant references applied in the rejections on appeal. Correction is required pertaining to the headings and content in the Examiner's Answer.

Accordingly, it is

**ORDERED** that the application is returned to the examiner:

- (1) to hold the Appeal Brief filed on August 1, 2005 defective;
- (2) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;

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(3) for the examiner to consider the supplemental Appeal Brief, vacate the Examiner's Answer mailed October 13, 2005 and issue a revised Examiner's Answer in response to the supplemental Appeal Brief, and to properly list all of the references relied upon under the heading "**Evidence Relied Upon**" in accordance with the **Manual of Patenting Examining Procedure (MPEP)** § 1207.02;

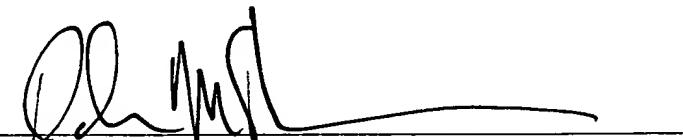
(4) to have a complete copy of the supplemental Appeal Brief and any subsequent Examiner's Answer scanned into the record;

and

(5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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